

Civil Traffic Rules and Procedure - The New Rules

Instruction Manual and Suggested Forms

Prepared by Hon. George T. Anagnost, Peoria Municipal Court

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Introduction

On December 1, 2002, new rules of procedure for civil traffic hearings and appeals take effect. Because the rules are “procedural” in nature:

- The rules apply to civil traffic cases filed in court as of December 1 even if the date of violation precedes December 1, 2002.
- The rules govern hearings and appeals after December 1 for pending cases.

This instruction manual includes the old and new language: prior language is stricken; the new rules are underlined. “Bubble” annotations at the end of selected rules summarize the purpose of the rule or identify questions that arose during committee study sessions.

A set of suggested forms including those approved by the rules are also provided. The forms in this manual were prepared for use in Maricopa County. However, other courts should be able to modify them as to caption, address, mailing distribution, margins, etc. as necessary for their use statewide. A flow chart showing the steps involved in a civil traffic appeal is at the end of the manual.

Ten Basic Changes in Civil Traffic Cases

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| • RULES SIMPLIFIED OR CLARIFIED | • APPEAL PERFECTED FIRST, RECORD SENT SECOND |
| • ALL CASES ON RECORD | • BOND NEEDED TO STAY EXECUTION |
| • REPORTER, AUDIO, VISUAL, DIGITAL | • “SIMPLIFIED RECORD” ON APPEAL |
| • NO AUTOMATIC RIGHT TO CHANGE OF JUDGE | • FIXED TIME LIMITS TO FILE APPEAL MEMOS |
| • DEFAULT PROCEDURE AT HEARING CLARIFIED | • FORMS |

RULES OF PROCEDURE IN CIVIL TRAFFIC VIOLATION CASES

Rule 1.	<u>Scope; Hearings and Appeals.</u>
Rule 2.	<u>Definitions.</u>
Rule 3.	<u>Applicability of Rules.</u>
Rule 4.	<u>Arizona Traffic Ticket and Complaint.</u>
Rule 5.	<u>Local Rules.</u>
Rule 6.	<u>Hearing Officer Qualifications and Duties.</u>
Rule 7.	— <u>Duties of a Hearing Officer; Non-availability of Right to Notice of Change of Judge.</u>
Rule 8.	<u>Sufficiency of the Complaint.</u>
Rule 9.	<u>Amending the Complaint.</u>
Rule 10.	Juveniles.
Rule 11.	Appearance and Entry of Plea; Appearance of Counsel.
Rule 12.	Notice of Right to Counsel and Waiver.
Rule 13.	Representation by the State.
Rule 14.	Discovery; Officer's Notes.
Rule 15.	Consolidation; Applicable Rules.
Rule 16.	Continuances.
Rule 17.	Oath and Questioning of Witnesses.
Rule 18.	Questioning of Witnesses.
Rule 19.	Rules of Evidence and Burden of Proof.
Rule 20.	Witnesses.
Rule 21.	Order of Proceedings.
Rule 22.	Record; Summary Transfer.
Rule 23.	Default by State at Hearing.
Rule 24.	Finding of Responsible
Rule 25.	Finding of Not Responsible.
Rule 26.	Default by Defendant at Hearing.
Rule 27.	Setting Aside Default Judgment
Rule 28.	Finding of Responsible or Not Responsible.
Rule 29.	Notice of Right to Appeal After Hearing; Waiver of Right to Appeal.
Rule 30.	Setting Aside Default Judgment
Rule 31.	Right to Appeal; Bond on Appeal.
Rule 32.	Notice of Appeal; Current Address for Further Proceedings.
Rule 33.	Time for Filing; Payment of Record or Transcript Fee to Trial Court.
Rule 34.	Record on Appeal; Contents of Record.
Rule 35.	Trial De Novo and Duty of Lower Trial Court to Transfer Funds.
Rule 36.	Duty of Lower Court to Transfer Funds.
Rule 37.	Consolidated Cases.
Rule 38.	Bond on Appeal and Stay of Proceedings.
Rule 39.	Transmission.
Rule 40.	Perfection of Appeal; Dismissal by Trial Court.
Rule 41.	Appellate Memoranda; Dismissal for Non-filing.
Rule 42.	Notification to Superior Court; Docketing the Appeal; Payment of the Appeal Fee;
Rule 43.	Transmission of the Record; Dismissal for Nonpayment.
Rule 44.	Oral Argument.
Rule 45.	Disposition on the Record by the Superior Court.
Rule 46.	Forms.

Rule 1. Scope; Hearings and Appeals

These rules shall apply in all cases involving the adjudication and appeals of civil traffic violations except those consolidated pursuant to Rule ~~15~~ 14 of these Rules.

Rules apply to hearings and appeals except for cases consolidated with criminal violations. Criminal rules take precedence for consolidated cases.

Rule 2. Definitions

(a) "Civil traffic violation" means any violation designated as such under the provisions of Section A.R.S. § 28-121, Arizona Revised Statutes, or any violation of expressly designated as such by a traffic ordinance of a city or town ~~expressly designated as such by such city or town.~~

(b) "Court" means a justice court or a court established by a city or town. Unless the context otherwise requires, "trial court" also means the justice or municipal court.

(c) "Judge" means a justice of the peace, judge, OR magistrate ~~or police justice of a court.~~

(d) "Hearing officer" means a person appointed as such under the provisions of A.R.S. § 28-1553, Arizona Revised Statutes.

(e) In computing time limits, the "last day" means that when the last day of any period of time prescribed herein falls on a Saturday, Sunday, or day when the court is closed, the "last day" shall be the next day court is open. The day of the act or event from which the designated time period begins is not to be included. Except as stated by these rules or by order of court in a particular case, filing deadlines are not enlarged when sent by mail.

(f) "Party" means the state or the defendant. A law enforcement officer, police aide, traffic investigator, or parking enforcement volunteer is not a party.

(g) Unless the context otherwise requires, the requirements of these rules may be performed by an attorney who has filed a proper notice of appearance.

Subparagraphs "e," "f," and "g" clarify basic concepts. Under "e" time computations are defined. There is no enlargement for mailed notices unless ordered in a specific case. Under "f" the only parties are the state and the defendant. Law enforcement personnel are not parties. Under "g" the rules confirm that the requirements of the rules may be performed by an attorney that has filed a notice of appearance.

Rule 3. Applicability of Rules

~~Every action or proceeding brought before a court on the complaint of a peace officer or duly authorized agent of a traffic enforcement agency for a A civil traffic violation or criminal traffic offense shall be commenced by the an Arizona Traffic Ticket and Complaint or by long-form complaint pursuant to Arizona Rules of Criminal Procedure, Rule 2.3.~~

This rule clarifies that civil violations may be by ATTC or as a “back-up” civil charge on a long form complaint.

Rule 4. Arizona Traffic Ticket and Complaint

~~(a) The Arizona Traffic Ticket and Complaint shall be in a form approved by the Supreme Court. at least triplicate, in dimensions of approximately 8 ½ inches by 11 inches, consisting of the original Complaint, violator/Defendant Copy, and Law Enforcement Copy, substantially in the form set forth in Appendix A annexed to these rules. A Court Report copy is required if no other method is used to forward disposition to the Department of Transportation, Motor Vehicle Division. Additional copies are optional.~~

~~(b) Any substantial variation from the form of the Arizona Traffic Ticket and Complaint must first be approved by the Supreme Court.~~

~~(c) Every court, law-enforcement agency or public body responsible for issuing the Arizona Traffic Ticket and Complaint shall promptly forward one form copy, and any subsequent changes therein, to the Supreme Court.~~

~~(d) Any court which maintains disposition information on computer may arrange with the Department of Transportation, Motor Vehicle Division, or the Department of Public Safety, as the case may be, for the electronic forwarding of disposition information without a certification by the judge.~~

Rule 5. Local Rules

Upon the written approval of the Supreme Court, any court may supplement these Rules by local rules, which shall be made available for distribution or examination at such court.

Rule 6. Hearing Officer Qualifications and Duties

~~(a) No person shall sit as a (A) A hearing officer on any civil traffic case unless he has attained the age of shall be at least 21 years old, is shall be of good moral character, and has shall have completed a course of instruction approved by the Supreme Court.~~

~~(b) A hearing officer may hear and dispose of civil traffic violation cases and make such orders as necessary and proper to dispose of such cases.~~

Rule 7. Duties of a Hearing Officer Non-availability of Right to Notice of Change of Judge

~~A hearing officer may hear and dispose of civil traffic violation cases and make such orders as may be necessary and proper to dispose of such cases. The rules of procedure regarding change of judge as a matter of right shall not apply in civil traffic cases except for cases consolidated with criminal matters pursuant to Rule 14.~~

This rule provides that there is no automatic right to a change of judge. The rule was a response to a perceived abuse where court dockets were obstructed with the filing of notice of change of judge on the day of hearing. Each court may decide how this rule will be enforced. Thus, in multi-judge courts, requests for change may be honored and the rule waived.

Rule 8. Sufficiency of the Complaint

~~No civil traffic~~ A complaint is legally sufficient if it shall deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific violation which the defendant is alleged to have committed if the complaint contains either a written description or the statutory designation of the alleged violation.

Rule 9. Amending the Complaint

(a) ~~A~~ The court may amend ~~permit~~ a civil traffic complaint ~~to be amended~~ at any time before judgment if no additional or different violation is charged and if substantial rights of the defendant are not ~~thereby~~ prejudiced.

(b) ~~A court~~ The complaint may amend a civil traffic complaint ~~be amended~~ to conform to the evidence adduced at hearing if no additional or different violation is charged ~~thereby~~ and if substantial rights of the defendant are not ~~thereby~~ prejudiced.

(c) All amendments to a complaint relate back to the date the complaint was issued.

(d) ~~If the judicial officer determines~~ Where there is a conflict between the written description and the statutory designation of a civil traffic violation, the descriptive text shall take precedence unless substantial rights of the defendant are prejudiced or such action would result in a criminal charge. ~~In every case where there is such conflict, if a the judicial officer is unable to determine what offense is was charged, he or she shall dismiss the charge shall be dismissed~~ without prejudice and notify the issuing agency notified.

Rule 10. Juveniles

~~Congestion in the court calendar may be deemed an "unusual circumstance" by the presiding judge within the meaning of A.R.S. §§ 28-1555 and the court may by reason thereof waive the appearance of the defendant's parent or guardian at any stage of the~~

~~disposition of a civil traffic complaint. In such case the court shall send written notice to the parent or guardian, if such be known, advising him of the charge and its disposition.~~

Because ARS 28 - 1555 governs juvenile defendants, this rule was deleted as unnecessary.

Rule ~~11~~ 10. ~~Appearance and Entry of Plea; Appearance of Counsel~~

~~(a) The defendant or his attorney may admit responsibility by appearing in person, or by mailing to by submitting the court a form provided by the court or in lieu of such form, a short statement signed by the defendant or his attorney admitting the allegations of the complaint. He The defendant shall, at the same time, tender to the court as the civil sanction for such violation, the amount listed in the court's deposit schedule for the civil traffic violation(s).~~

~~(b) The defendant or his attorney may deny responsibility by appearing in person or by mailing to the court a form provided by the court or in lieu of such form, a denial signed by the defendant or his attorney notifying the court in writing. He The defendant may, at the same time, tender the amount of the civil sanction listed in the court's deposit schedule for civil traffic violations to insure that no driver's license suspension will result should he fail from failure to appear. Upon receipt of said notice, the court shall set the matter for hearing and notify the defendant, at the address set forth on the complaint or any different address provided by the defendant or his attorney, of the date, time, and place for the hearing.~~

Rule ~~12~~ 11. Notice of Right to Counsel and Waiver

~~(a) If a defendant denies the allegations contained in the complaint and requests a hearing, the court shall promptly provide the defendant written notice that his of a hearing date. The notice of hearing date shall also state that the right to be represented by counsel at the hearing is waived unless he notifies the court and the State are notified in writing at least 10 calendar days prior to the hearing date of his election to be represented by counsel. Such notice to defendant shall specify the appropriate place and manner for filing his notice of counsel.~~

~~(b) Absent extraordinary circumstances, failure of a defendant to timely notify the court that he elects to be represented by counsel and the State constitutes a waiver of his the right to counsel at the hearing.~~

Rule ~~13~~ 12 . Representation by the State

The State need not be represented by counsel at the hearing or appeal of a civil traffic complaint. Absent extraordinary circumstances, the State's right to be represented by counsel at the hearing is waived unless, at least 10 calendar days prior to the hearing date or within 10 calendar days of receipt of notice that the defendant will be represented by counsel,

~~whichever is later, the State notifies the court and the defendant, at the address set forth on the complaint or any different address provided by the defendant or his attorney, of its election to be represented by counsel.~~

Rules 11 and 12 govern appearances of counsel. Absent extraordinary circumstances, 10 calendar day prior notice is required to be timely or the right to counsel is waived. The rule is permissive; depending on circumstances nothing prohibits an untimely appearance if the court allows it. The rule also clarifies that nonappearance of state at hearing stage does not preclude its appearance at the appeal stage.

Rule ~~14~~13 . Discovery; Officer's Notes

(a) No pre-trial hearing discovery shall be permitted absent extraordinary circumstances.

(b) Immediately prior to the hearing, both parties shall produce for inspection any pre-prepared exhibits and written or recorded statements of any witness ~~which may be offered at the hearing~~. Failure to comply with this rule may result, in the court's discretion, in the sanction of granting a recess or continuance to permit such inspection or denying admission of the evidence not so exchanged.

(c) During the hearing, upon request of the defendant, the citing officer shall produce any notes made by the officer in reference to the civil traffic complaint. This rule shall not be construed to create a duty on the officer to maintain or preserve notes.

Subpart "c" was added to clarify the right of a defendant at hearing to inspect notes taken by the citing officer (made at any time) in reference to the citation. The last sentence is precautionary. The rule does not create a per se duty to keep notes.

Rule ~~15~~14 . Consolidation; Applicable Rules

(a) ~~If a~~Civil and criminal traffic cases ~~are~~ based on the same conduct or ~~are~~ otherwise related ~~connected together~~ in their commission; ~~the cases~~ may be consolidated at any point in the proceedings on ~~the~~ motion of ~~any~~ party; or on the court's own motion.

(b) At the trial of any consolidated case, the rules governing the criminal case shall apply, except that the civil case shall be tried to the court, and the standard of proof in the civil case shall be by a preponderance of the evidence.

Rule ~~16~~15. Continuances

(a) The court may, upon motion of ~~any~~ party or witness, or on its own motion, continue the hearing on a civil traffic case for a period not exceeding 60 days, if it appears that the interests of justice so require.

(b) Absent extraordinary circumstances, no hearing shall be continued by the court without notice to both parties.

(c) The court shall notify ~~both~~ the parties and witnesses in writing of the new hearing date.

This rule was modified, after considerable discussion, to allow parties and witnesses to request a continuance. The rule is based on the inherent standing of a witness faced with compulsory process to be heard when served with a subpoena to appear. During the drafting stage, limiting continuances to parties and law enforcement witnesses, and not civilian witnesses, was strongly urged as a way to avoid complicating court scheduling issues. This suggestion was not adopted in part to avoid any appearance that one group of witnesses had preference. Nevertheless, the rule is permissive. This rule is not intended to alter any existing continuance policies in the various limited courts.

Rule ~~17~~16. Oath and Questioning of Witnesses

(a) All testimony shall be given under oath or affirmation.

(b) The court may, on its own motion, call and examine witnesses, including the defendant in cases other than those consolidated pursuant to Rule 14 of these Rules.

(c) No person may be examined or cross-examined at a hearing except by the court, an attorney for a party, or the defendant.

~~Rule 18. Questioning of Witnesses~~

~~(a) The court may, on its own motion, call and examine witnesses, including the defendant in cases other than those consolidated pursuant to Rule 15 of these Rules.~~

~~(b) No person may be examined or cross-examined at a hearing except by the court, an attorney for a party, or the defendant.~~

Rule ~~19~~17. Rules of Evidence and Burden of Proof

(a) The Arizona Rules of Evidence shall not apply in civil traffic cases. ~~Any evidence offered~~ Evidence may be admitted subject to a determination ~~by the hearing officer or judge~~ that the ~~offered~~ evidence ~~is relevant and material and~~ has some probative value to a fact at issue. Nothing in this rule is to be construed as abrogating any statutory provision relating to privileged communications.

(b) The State's burden of proof shall be by a preponderance of the evidence.

Rule ~~20~~18. Witnesses

All witnesses for the State's case in chief, ~~other than the defendant,~~ shall be required to testify prior to the defendant's ~~being required to testify or produce any evidence~~ case. However, a witness not called to testify in the State's case in chief may be called in rebuttal to testify to an issue raised by the defense.

Rule ~~21~~19. Order of Proceedings

The order of proceedings shall be as follows:

- (a) ~~Festimony~~ Direct, cross, and re-direct examination of State's witnesses.
- (b) ~~Festimony~~ Direct, cross, and re-direct examination of defense witnesses.
- (c) ~~Festimony~~ Direct, cross, and re-direct examination of State's rebuttal witnesses, if any.
- (d) ~~Festimony~~ Direct, cross, and re-direct examination of defense surrebuttal witnesses, if any.
- (e) Argument of the parties or their counsel if permitted by the court.
- (f) Ruling by the court.

Rule ~~22~~20. Record; Summary Transfer

(a) A record of the proceedings ~~may~~ shall be made by a court reporter, ~~by videotape, audiotape, digital, or by any other recording method of accurately reproducing what occurred at the proceedings which is approved by the Supreme Court.~~

(b) Where it appears that the record of the hearing is insufficient, the trial court shall summarily transfer the entire file to Superior Court for trial de novo. In a case under this subsection, no appellate memorandum shall be required. Upon receipt of the file, the Superior Court shall notify the parties with instructions as to further proceedings.

Subpart "a" requires that all hearings be on the record. The method of recording is modernized. Subpart "b," "Summary Transfer," is a new procedure introduced at the request of court administrators. The rule addresses the situation where, due to unintended mistake or mechanical failure, no record of the hearing is available. In such a case, the trial court is to send the entire file to Superior Court for trial de novo. No appellate memoranda are filed under this procedure. The Forms 4, 4A, and 7 set forth the summary transfer procedure. See flow chart at end of manual..

Rule 23-21. Default by State at Hearing

If no witness for the State, excluding the defendant, appears at the time set for hearing, the court shall dismiss the complaint and return any deposit, unless the court, for good cause shown, continues the hearing to another date.

Rule 24. Finding of Responsible

~~If the defendant, after hearing, is found responsible, the court shall enter judgment for the State and impose a civil sanction.~~

Rule 25. Finding of Not Responsible

~~If the defendant, after hearing, is found not responsible, the court shall dismiss the complaint and return any deposit.~~

Rule 26-22. Default by Defendant at Hearing

~~(a) Except where Rule 21 is applicable, if the defendant fails to appear as required provided by statute and these rules, the allegations of the complaint shall be deemed admitted, and the court shall enter judgment for the State, and impose a civil sanction, and report such judgment to the Department of Transportation.~~

~~(b) If it appears from the face of the complaint that the defendant is was in the active military service, no default judgment may be entered. In such case, the court may notify the defendant's commanding officer, if known, of the defendant's failure to appear.~~

Rules 21 and 22 clarify the procedure at hearing when state's witnesses or the defendant fail to appear. This rule is based on the principle that the state has the burden of proof. Under Rule 21, if no witnesses for the state appear, the case is to be dismissed unless continued for good cause. (Such a case might be where the officer notifies the court that a priority call prevents the officer's attendance as scheduled.) Similarly, in a case where no one for either side appears for hearing, per rule 21, the citation should be dismissed. Under Rule 22, if the defendant fails to appear when the state is ready to proceed, then a default is entered. The requirement of Rule 22 (a) that the court "shall" impose a civil sanction is conceptual. The sanction imposed may be a suspended fine.

Rule 23. Setting Aside Default Judgment

Upon written motion, for good cause or any other reason necessary to prevent a manifest injustice, the court may set aside a judgment entered upon a failure to appear.

Rule 24 . Finding of Responsible or Not Responsible

(a) If the defendant is found responsible, the court shall enter judgment for the State and impose a civil sanction(s).

(b) If the defendant is found not responsible, the court shall enter judgment for the defendant and return any deposit.

Rule 27-25. Notice of Right to Appeal After Hearing; Waiver of Right to Appeal

(a) Immediately following judgment and imposition of civil sanction after hearing, the court shall deliver to the defendant a written notice of right to appeal. Such notice shall state that a right to appeal exists, the applicable time limit, and the location and manner of filing the notice of appeal, and shall refer where the defendant may find to the rules governing the appeal process.

(b) A defendant who admits responsibility waives the right to appeal.

During discussions, the question arose whether a defendant who admits responsibility can nevertheless “appeal” the sanction or whether a party may appeal denial of a motion to withdraw a plea of responsible. This rule creates a “bright line” of appellate practice: a party who admits responsibility, waives the right of direct appeal. The situation is analogous to the criminal rule that a party who pleads guilty, waives the right of direct appeal. Whether appellate review by special action is available for defendants who plead responsible is beyond the scope of these rules. The other area of concern involves relief from default judgments. In this area, it would appear that a party may appeal denial of a motion to set aside a default judgment, analogous to practice under Rule 60 (c) of the rules of civil procedure.

Rule 28. Setting Aside Default Judgment

~~(a) For good cause shown, and upon terms the court deems just, the court may set aside a judgment entered upon a failure to appear. A motion to set aside the judgment shall be made in writing within 30 days after entry of judgment.~~

~~(b) At any time, the court shall set aside a judgment entered upon a failure to appear, if it appears to the court that the named defendant was not served a copy of the complaint, or for any other reason where necessary to prevent a manifest injustice.~~

Rule 29-26. Right to Appeal; Bond on Appeal

(a) Any party may appeal to the Superior Court from a final order or final judgment in a civil traffic case as provided by statute and these Rules.

(b) The posting of bond shall not be a condition of the right to appeal, but enforcement of the judgment shall not be stayed unless an appeal bond is provided in accordance with these rules.

(c) The posting of an appeal bond shall stay enforcement of the judgment. Unless the bond amount is reduced or waived by the trial court, the amount of the bond shall be the total amount of the sanction(s) assessed in the final judgment. The bond shall be paid in cash or such other manner as directed by the trial court. When the defendant has paid the entire applicable sanction prior to the filing of a notice of appeal, such payment shall constitute the bond on appeal.

The rules that follow, Rules 26 thru 37, deal with appeals. These rules introduce new concepts and procedures. To facilitate their use, the forms in Rule 37 may be useful. Rule 26 deals with the right to appeal and the posting of a bond. FORM 1 accompanies this rule and is the defendant's advisory of the right to appeal from an adverse ruling after hearing. As this rule states, the posting of bond cannot be a condition of the right to appeal. A bond is required, however, to stay enforcement of the judgment. Normally the amount of the sanction is the amount of the bond and must be tendered in cash. The court cannot impose a bond greater than the amount of the sanction(s). The rule is permissive and allows each court its own policy as to how bonds are to be provided. FORM 3 allows a defendant to request a waiver or reduction in bond amount. Where a party pays the sanction and thereafter timely files a notice of appeal, the rule provides the payment is deemed to be the bond.

Rule 30-27. Notice of Appeal; Current Address for Further Proceedings

~~(a) An appeal shall be taken~~ commence by filing a written notice of appeal with the ~~lower trial court.~~ The notice of appeal shall identify the final order or final judgment appealed from.

~~(b) The notice of appeal shall identify the order or judgment appealed from. It shall be signed by the appellant or his attorney, if any, and shall contain the names, addresses and telephone numbers of all parties and their attorneys. When the defendant is the appellant, the notice of appeal shall set forth the defendant's current mailing address and phone number. Unless the court is notified in writing of a change of address, the current address shall be valid for the sending of other notices to defendant in subsequent proceedings.~~

~~(c) When a party appeals, the lower trial court shall send a copy of the notice of appeal to the appellee other party or his attorney, if any.~~

Subpart "b" requires defendant's current mailing address while the appeal is pending, which address is valid for further notifications until changed in writing. FORM 2, the Notice of Appeal, requires the address even when the defendant is represented by counsel. When a party appeals, the trial court is required to send a copy of the notice to the appellee.

Rule 31-28. Time for Filing; Payment of Record or Transcript Fee to Trial Court

(a) The notice of appeal shall be filed within ten 14 calendar days after the entry of the

final order or final judgment appealed from.

(b) Within the 14 calendar day deadline to file the notice of appeal, the appellant shall also pay the applicable record or transcript fee to the trial court in cash or other manner allowed by the trial court. The trial court may also assess a separate fee to prepare additional requested copies of recorded proceedings.

To simplify time computations, this rule prescribes 14 calendar days as the appeal time limit. Subpart “b” also requires the appellant to pay any record or transcript fee in cash or such other method allowed by the court. This contemplates the court’s discretion to allow installment payments.

Rule 32-29. Record on Appeal; Contents of Record

(a) ~~Appeals shall be on the record where a record has been made in accordance with Rule 22 these Rules.~~ The condition of the record shall be subject to review by the Superior Court. If the Superior Court adjudges the record insufficient; or not in proper condition to ~~enable the court to~~ adjudicate the issues, a trial de novo in the Superior Court shall be granted.

(b) The contents of the record shall consist of only the following: (i) the notice of appeal; (ii) the docket or listing of case events; (iii) the complaint; (iv) the disposition; (v) documentation or record of payment of any sanction, deposit, or bond applicable to the case; (vi) any motions or responses thereto; (vii) the record of the hearing(s); (viii) any exhibits offered in evidence at the hearing (admitted or not); and (ix) the appellate memoranda required or allowed by Rule 33. A party may attach as an exhibit to the appellate memorandum any other certified documents contained in the case file deemed relevant to the appeal.

(c) The trial court may transmit certified duplicate originals of any document in the record.

Subpart “b” is new and introduces the idea of a “simplified” record on appeal. Routine case file documents such as hearing notices, subpoenas, MVD abstracts, notices of appearance, and general correspondence, are not to be sent as part of the record. A party may attach to its appellate memorandum a certified copy of any other part of the case file deemed pertinent. The trial court may send original documents or certified copies. Form 7 would be used to transmit the record from the limited court to the Superior Court.

Rule 33-30. Trial De Novo and Duty of ~~Lower~~ Trial Court to Transfer Funds

After a trial de novo, the Superior Court may:

(a) Adjudge the defendant responsible and impose a civil sanction as it deems proper;
or

(b) Adjudge the defendant not responsible and ~~discharge him and exonerate his any~~

appeal bond, if any order the trial court to return any sanction, deposit, or bond previously tendered by appellant.

(c) If, after a trial de novo, the Superior Court adjudges the defendant responsible and imposes a civil sanction, it shall notify the trial court. The trial court shall within 30 calendar days transmit to the Superior Court any sanction, deposit, or bond in the case.

Rule 34. Duty of Lower Court to Transfer Funds

~~If, after a trial de novo, the Superior Court adjudges the defendant responsible and imposes a civil sanction, it shall immediately notify the presiding officer of the lower court from which the case originated. The presiding officer shall within ten days thereafter transmit to the Superior Court any sanction, or deposit in the case.~~

Rule 35-31. Consolidated Cases

When an appeal is taken in both civil traffic and criminal cases consolidated for trial, the rules of procedure governing criminal appeals shall apply.

Rule 36. Bond on Appeal and Stay of Proceedings

~~Bond on appeal shall be in the amount of the civil sanction unless the lower court for good cause determines that the bond shall be set in a lesser amount. The lower court disposition shall be stayed when secured by bond on appeal.~~

Rule 37. Transmission of Record

~~(a) Within five days after the notice of appeal is filed the appellant shall make arrangements with the lower court to pay for the record. The lower court shall notify the Superior Court and the appellant if the appellant fails to make satisfactory arrangements within the prescribed time. The Superior Court may dismiss the appeal ten days after receipt of such notification.~~

~~(b) Upon notice that the appellant has made arrangements to pay for the record the lower court shall within 60 days prepare and transmit the record to the Superior Court.~~

~~(c) The parties may stipulate that the appeal be heard on less than a complete record or upon stipulated facts. The designation of the stipulated record shall be in writing, filed in the lower court within fifteen days after the notice of appeal is filed.~~

Rule 32. Perfection of Appeal; Dismissal by Trial Court

(a) Perfection of the appeal shall include: (1) the timely filing of a notice of appeal and payment of any record or transcript fee with the trial court; (2) the timely filing of an appellant's memorandum with the trial court; (3) the timely payment of any Superior Court filing fee.

(b) In the event an appeal is not fully perfected, the appeal shall be deemed abandoned and dismissed by order of the trial court with notice to the appellant.

(c) In the event an appeal is dismissed, the judgment of the trial court may be enforced as if no appeal had been taken. The trial court may take appropriate action including the application of any payment, deposit, or bond to the sanction, notice to the Department of Transportation, Department of Public Safety, or Motor Vehicle Division, or notice to the appellant to reappear upon at least 14 calendar days written notice for further proceedings.

This rule describes the steps the appellant must perform to perfect the appeal at the trial court level. Failure to pay for the record or transcript as allowed by the court, failure to file an appellate memorandum, and failure to pay the Superior Court filing fee are omissions that enable the trial court to deem the appeal abandoned and enter a disposition "as if no appeal had been taken." Form 8 is used to re-notice the defendant as needed.

Rule 38-33. Appellate Memoranda; Dismissal for Non-filing

~~The appellant shall file his memorandum within twenty days after the filing of the record in the Superior Court. The appellee's memorandum shall be filed within twenty days after service of appellant's memorandum. No further memoranda shall be filed unless ordered by the Superior Court.~~

(a) The appellant shall file an original and one copy of appellant's memorandum in the trial court within 60 calendar days of the deadline to file the notice of appeal. The trial court shall mail or deliver the copy of the memorandum to the appellee. For good cause, the trial court may enlarge the time to file the memorandum.

(b) If the appellant fails to file an appellate memorandum, the appeal shall be deemed abandoned and dismissed by the trial court with notice to appellant. Where the defendant is the appellant, the trial court may proceed as set forth in rule 32(c).

(c) An original and one copy of the appellee's memorandum shall be filed within 30 calendar days of transmittal of the appellant's memorandum. The trial court shall mail or deliver the copy of the memorandum to the appellant. For good cause, the trial court may enlarge the time to file the appellee's memorandum. If the appellee does not file a memorandum, the appeal shall be submitted on the appellant's memorandum and the record. The non-filing of an appellee's memorandum shall not be deemed a confession of error.

(d) Appellate memoranda shall be typed or printed on white, opaque, letter-size paper, double-spaced, and shall not exceed 15 pages, excluding exhibits. The memorandum shall set forth a factual and legal basis for appropriate judicial relief.

(e) No further memoranda shall be filed unless ordered by the Superior Court.

(f) Motions for more time shall be presented to the trial court and shall be ruled upon by a judge other than the judge that heard the matter being appealed.

The appellate memoranda are filed with the trial court. An original and one copy are required. The trial court sends the copy to the appellee. The appellant has 60 calendar days to file the memorandum from the expiration of the deadline to appeal. Thus, if the appeal is filed on fifth day of the appeal period, the party still has 60 calendar days from the end of the 14th day to file the memorandum. The filing of the memorandum is a clerical function. The trial court is not required to verify that the memorandum conforms to the criteria as to page length, type style, etc. or otherwise decide whether to accept or reject the memorandum. The trial court is allowed to extend the time to file the memorandum for good cause. The judge who considers this request is not to be the same judge (or hearing officer) who heard the matter being appealed from. The appellee has 30 calendar days to file its memorandum. Alternatively, if the State has filed a standing notice that it will not appear and file a memorandum, the trial does not need to wait the additional 30 days. After that time limit expires, the case may be ready for transmission to Superior Court. FORM 4A (Initial Perfection) may be used to advise the Superior Court that the case awaits the next step - payment of the Superior Court appeal fee.

Rule 34. Notification to Superior Court; Docketing the Appeal; Payment of the Appeal Fee; Transmission of the Record; Dismissal for Nonpayment

(a) After the time to file any appellee memorandum has expired and the appeal is otherwise perfected, the trial court shall send the notice of appeal to the Superior Court within 30 calendar days. Upon receipt, the Superior Court shall file the notice of appeal and notify appellant regarding payment of any appeal fee.

(b) The appeal fee shall be payable within 30 calendar days of the notification to the appellant. This notification shall advise the appellant that failure to pay the appeal fee will result in dismissal and remand for proceedings set forth in rule 32(c).

(c) Upon payment of the appeal fee, the Superior Court shall notify the trial court. The record shall be transmitted to the Superior Court within 30 calendar days of notification.

(d) If the appeal fee is not timely paid, the Superior Court shall dismiss the appeal, notify the appellant and trial court, and remand the case for further proceedings pursuant to rule 32(c).

This rule continues the important concept of “perfection” before the record is sent to Superior Court. If the appeal is timely paid, the Superior Court will notify the trial court. FORM 5 is the Superior Court notification to the appellant to pay the Superior Court appeal fee. If the fee is paid, FORM 6 is the notice from Superior Court to the trial court to send the record, Form 6A to send a summary transfer case. If the appeal fee is not timely paid, FORM 5A is the notice of nonpayment. If the case is fully perfected, the trial court will use FORM 7 to transmit the record on appeal or the entire file for a summary transfer.

Rule 39-35. Oral Argument

Appeals shall be without oral argument, unless requested by the Superior Court or allowed by the Superior Court upon motion of either party.

Rule 40-36. Disposition on the Record by the Superior Court

After determination of an appeal, the Superior Court may:

- (a) Affirm the action of the lower trial court and remand for further proceedings; or
- (b) Affirm in part and reverse in part and remand for further proceedings; or
- (c) Reverse the action of the lower trial court and remand, if necessary, for further proceedings, including a new hearing; or
- (d) If the record is deemed insufficient, order a trial de novo in the Superior Court.

Rule 37. Forms

The following forms are approved for use in civil traffic proceedings:

- 1. Defendant's Notice of Right to Appeal (Civil Traffic)
- 2. Defendant's Notice of Appeal (Civil Traffic)
- 3. Motion to Waive or Reduce Bond and Order
- 4. Notice of Summary Transfer to Superior Court for Trial De Novo
- 4A. Notice of Initial Perfection of Record on Appeal to Superior Court (Civil Traffic) * Suggested
- 5. Notice to Appellant Re: Payment of Superior Court Appeal Fee
- 5A. Notice of Nonpayment of Superior Court Appeal Fee (Civil Traffic) * Suggested
- 6. Request for Transmittal of Record to Superior Court
- 6.A Request for Transmittal of Summary Transfer Case to Superior Court* Suggested
- 7. Transmittal of Record on Appeal to Superior Court (Civil Traffic) * Suggested
- 8. Notice of Final Disposition of Appeal by Limited Court (Civil Traffic) * Suggested

The forms in this rule are "approved" for use. This makes clear that the forms are not mandated but may be modified to conform to the best practices of a particular court and county. It is contemplated that forms may be adopted by administrative code as necessary from time to time. Also, note that in this list of rules, five have been marked with asterisks to denote suggested forms that assist in connecting the steps involved in the appeal process.

Form 1. Defendant's Notice of Right to Appeal (Civil traffic)

[CAPTION]

STATE OF ARIZONA	)	No. _____
)	
vs.	)	DEFENDANT'S NOTICE OF RIGHT
	)	TO APPEAL (CIVIL TRAFFIC)
)	
_____)	

A party may appeal a final order or final judgment entered in a civil traffic case. This notice explains your rights and responsibilities to file an appeal from such an order or judgment.

There are two separate stages to the appeal process. The first stage begins in this court; the second stage takes place in the county Superior Court. Remember, you must complete all steps at both stages, or you run the risk of having your appeal dismissed. This notice does not set forth all the rules on traffic appeals. To read them entirely, you may review the Arizona statutes and rules of traffic court procedure at the library. It is recommended that you keep a copy of all your documents and receipts during the appeal.

STAGE ONE - THE TRIAL COURT

- (A) **THE NOTICE OF APPEAL.** To appeal, you must file a "Notice of Appeal" with the trial court clerk within 14 calendar days from the date of the final order or final judgment. If you do not file a "Notice of Appeal" within these 14 days, you lose the right to appeal. In your Notice of Appeal, be sure to specify which actual charge or violation you are appealing.
- (B) **THE RECORD.** On or before the 14-day deadline to appeal, you must also pay for a copy of the proceedings at the hearing. The copy may be a recording or a transcript. The clerk will explain which type of record is required. Payment must be in cash or other method explained by the clerk. If you cannot afford to pay for the record, ask the clerk for information about a waiver or extension ("deferral") to make payment later. If you fail to pay for the record or transcript, your appeal may be dismissed. Additional copies of the hearing may be obtained for an additional charge.
- (C) **POSTING A BOND ON APPEAL TO STAY JUDGMENT.** You cannot be forced to post a bond in order to exercise your right to appeal. However, the civil traffic judgment normally includes a sanction (monetary fine) and, for moving violations, points on your license. In some cases too, the court may have suspended your license or registration as part of its decision. These penalties are NOT stopped just because you have filed a timely notice of appeal! In order to stop these penalties from being imposed while your appeal is pending, you must "post bond" with the trial court. The amount of the bond is the total amount of the sanction ordered by the court unless the trial court orders that the bond be reduced or waived. If you do not post bond to stay enforcement, then the order to pay is still in force and must be complied with. **IF YOU DO NOT POST BOND, AND YOU DO NOT TIMELY PAY ANY SANCTION, YOUR LICENSE COULD BE SUSPENDED WITHOUT FURTHER NOTICE.**
- (D) **THE WRITTEN APPEAL MEMORANDUM.** Within a few days after you have paid for the record to be prepared, the court will contact you to pick up your record. You will need the record for this next step - the "Appellant's Memorandum." The appellant's memorandum is your written "brief" or explanation why the trial court ruling was legally wrong. Normally, the memorandum will refer to specific portions of the record of the hearing to point out where there was error by the court. (That is

why a party who appeals pays for a copy of the record.) The memorandum should be typed or printed on letter-sized white paper, double spaced, and not exceed 15 pages in length, not counting any exhibits from your hearing you want to attach to the memorandum.

- (E) **FILING THE APPELLANT’S MEMORANDUM WITHIN 60 DAYS.** If you file an appeal, you are the “appellant.” The appellant’s memorandum must be filed with the court within 60 calendar days of the deadline to file the notice of appeal. Put the caption of the case and your case number at the top of your memorandum. Print the title “APPELLANT’S MEMORANDUM” below the caption so the court can identify it when it is filed. You must file the original and 1 copy of the memorandum with the court. (The other side then has 30 days to file an “Appellee’s Memorandum.”)
- (F) **WAIT FOR FURTHER INSTRUCTIONS.** Once the memorandum has been filed, you should await further instructions from the Superior Court as outlined in the next stage. To keep you informed, remember that the trial court must have your current mailing address at all times. Even if you hire an attorney, your address is still required for legal notifications.

STAGE TWO - THE SUPERIOR COURT

- (G) **PAYING THE SUPERIOR COURT FILING FEE.** If you have completed all of the first stage, your case moves to Superior Court where an appeals judge will look at the case. About 60 days after you file your memorandum, you will receive a notice from the Superior Court. This notice will (1) assign a Superior Court case number to use in all further correspondence, and (2) instruct you to pay the Superior Court appeal filing fee. You must pay this filing fee or your appeal may be dismissed and your case sent back to the trial court. Again, if you cannot afford to pay the filing fee, contact the Superior Court clerk for information about a possible waiver or extension (“deferral”) to make payment later. For more information, you may contact Superior Court in your county.
- (H) **SUPERIOR COURT ACTION ON THE APPEAL.** If you have now completed all these steps, you will receive a ruling from the Superior Court. The Superior Court has the right to affirm the trial court, overrule the trial court, modify some of the trial court decision, or, if record is not clear, order a new trial in the Superior Court. If the final outcome of your case is that the ruling stands, or if your appeal is dismissed for any other reason, remember that the court may apply any bond, deposit, or payments already made and that you may have to return to the trial court to be given other instructions in person.

Dated: _____

I acknowledge receipt of a copy of this Notice

Defendant

DefendantsNoticeofRighttoAppeal(Civil traffic).wpd

Form 2. Defendant's Notice of Appeal (Civil Traffic)

[CAPTION]

STATE OF ARIZONA) No. _____
)
 vs.) Charge No. _____
)
) _____
)
) DEFENDANT'S NOTICE OF APPEAL
) (CIVIL TRAFFIC)
)
 _____)

The undersigned appeals from the final order or final judgment in the above case:

Appellant understands: (1) the instructions set forth in the "Notice of Right to Appeal" including payment for a copy of the record or transcript, the right to post bond to stay enforcement of the judgment, filing an appellant's memorandum with the trial court, and paying a filing fee to the Superior Court; and (2) failure to complete all stages in the appeal may result in the dismissal of the appeal and reinstatement of the trial court judgment.

The following address may be used for all court notices. The court will be notified IN WRITING of any change of address.

Defendant's current mailing address must be PRINTED here, even if defendant is represented by counsel:

Street _____ Apt./Unit No. _____

City, State _____ ZIP _____

(Daytime Phone) () _____

Dated: _____

Defendant's or Attorney's Signature Bar No.

Defendant's Birth Date _____

DefendantNoticeofAppeal(Civil Traffic).wpd

Form 3. Motion to Waive or Reduce Bond and Order (Civil Traffic)

[CAPTION]

STATE OF ARIZONA) No. _____
)
vs.) Charge No. _____
)
) MOTION TO WAIVE OR REDUCE
) BOND PENDING APPEAL OF
) CIVIL TRAFFIC CASE and
) ORDER (CIVIL TRAFFIC)
_____)

The undersigned appellant moves the trial court to waive, or in the alternative, reduce the bond in the above cause. The current bond amount is \$ _____. This request is made for these reasons: (PLEASE PRINT LEGIBLY)

Dated: _____
_____ Defendant

O R D E R

The Court, having reviewed the above application, hereby:

" Waives bond " Reduces the bond amount to \$ _____

" Denies the application, good cause not appearing.

Dated: _____
_____ Judge

Motion to Waive or Reduce Bond and Order.wpd

Form 4. Notice of Summary Transfer to Superior Court for Trial De Novo (Civil Traffic)

[CAPTION]

STATE OF ARIZONA) No. _____
)
 vs.) Charge No. _____
)
) NOTICE OF SUMMARY TRANSFER
) FOR TRIAL DE NOVO IN
) SUPERIOR COURT
) (CIVIL TRAFFIC)
 _____)

To the Clerk of Superior Court:

A Notice of Appeal has been filed in the above case and is enclosed. A sufficient record of the hearing is not available. Pursuant to the rules, the appellant is entitled to a trial de novo in Superior Court. No appellant memorandum will be filed in this case.

Please assist as follows:

- (1) Contact the appellant regarding payment of the Superior Court filing fee.
- (2) Notify this court when the record is to be transmitted to your court.
- (3) Defendant's current mailing address is:

Street _____ Apt./Unit No. _____

City, State _____ ZIP _____

(Daytime Phone) () _____

Defendant's attorney's name and mailing address is:

Name _____ Bar No. _____

Street _____ Suite No. _____

City, State _____ ZIP _____

(Daytime Phone) () _____

The contact person in the limited court is: _____

Dated: _____ Clerk _____

NoticeofSummaryTransfertoSuperiorCt.wpd

[CAPTION]

STATE OF ARIZONA)	No. _____
)	
vs.)	Charge No. _____
)	
)	NOTICE OF INITIAL PERFECTION
)	OF RECORD ON APPEAL TO
)	SUPERIOR COURT (CIVIL TRAFFIC)

Please be advised that the appellant has completed the initial steps required in this court to perfect the record on appeal. Attached is the Notice of Appeal. This court has the record and appellate memoranda. You are requested to notify the appellant with instructions as to payment of any Superior Court appeal fee and to notify this court accordingly.

(Daytime Phone) ()

(Daytime Phone) ()

Dated: _____

_____ Clerk

Form 5. Notice to Appellant Re: Payment of Superior Court Appeal Fee

[CAPTION]

STATE OF ARIZONA	)	No. _____
)	
vs.	)	Lower Crt. No. _____
)	
	)	NOTICE TO APPELLANT RE:
	)	PAYMENT OF SUPERIOR COURT
	)	APPEAL FEE
_____)	

To the appellant in the above matter, please be advised as follows:

1. The appeal in the above matter has been docketed with the Superior Court. Pursuant to the rules of appellate procedure, you are required to pay an appellate filing fee to the Clerk of Superior Court.
2. A payment of \$ _____ must be received within 30 calendar days of the date of this notice stated below.
3. Payment must be by cash, check, money order, or cashier's check, payable to the "Clerk of Superior Court." Please include any assigned Superior Court case number on the face of any payment you send to the court. Do not send cash through the mail.
4. You are advised that, if the appeal fee is not timely paid, your appeal will be dismissed without further notice and your case sent back to the trial court.
5. If you cannot afford to pay the above fee, please contact the Superior Court before the deadline expires for instructions regarding a possible deferral or waiver of applicable fees. If have questions, you may contact Superior Court at 602 506 3427.

Dated: _____
Clerk of Superior Court

NoticetoAppellantRe:PaymentofSuperiorCt AppealFee.wpd

Form 5 A. Notice of Nonpayment of Superior Court Appeal Fee (Civil Traffic) * Suggested

[CAPTION]

STATE OF ARIZONA

vs.

) No. _____
)
) Lower Court _____
)
) Lower Crt No. _____
)
) Charge No. _____
)
) NOTICE OF NONPAYMENT
) OF SUPERIOR COURT APPEAL
) FEE (CIVIL TRAFFIC)
)
_____)

To the Clerk of _____ Court:

Please be advised that the Superior Court appeal fee required in this case was not timely provided by the appellant.

IT IS ORDERED, dismissing the appeal and remanding the matter back to the trial court for action pursuant to the applicable rules of procedure for civil traffic appeals.

Dated: _____

Judge

Form 6. Request for Transmittal of Record to Superior Court

[CAPTION]

STATE OF ARIZONA

vs.

)
)
)
)
)
)
)

No. _____

Lower Cr t. No. _____

REQUEST FOR TRANSMITTAL
OF RECORD TO SUPERIOR COURT

To the Clerk of _____ Court:

The appeal in Superior Court in the above matter has been properly filed and perfected. You are hereby requested to transfer the record on appeal to this court within 30 days. Thank you for your assistance.

Dated: _____

Clerk of Superior Court

RequestforTransmittalofRecordtoSuperiorCt.wpd

Form 6A. Request for Transmittal of Summary Transfer Case to Superior Court*
Suggested

[CAPTION]

STATE OF ARIZONA	)	No. _____
)	
vs.	)	Lower Crt. No. _____
)	
	)	REQUEST FOR TRANSMITTAL
	)	OF SUMMARY TRANSFER CASE
	)	TO SUPERIOR COURT
_____)	

To the Clerk of _____ Court:

This court has received your notice of summary transfer. You are hereby requested to transfer the record on appeal to this court within 30 days. Thank you for your assistance.

The contact person in Superior Court is: _____

Dated: _____

Clerk of Superior Court

RequestforTransmittalofSummaryTransferCasetoSuperiorCt.wpd

Form 7. Transmittal of Record on Appeal to Superior Court (Civil Traffic) * Suggested

[CAPTION]

STATE OF ARIZONA	)	No. _____
)	
vs.	)	Lower Crt. No. _____
)	
	)	TRANSMITTAL OF RECORD
	)	ON APPEAL TO SUPERIOR COURT
	)	(CIVIL TRAFFIC)
_____)	

To the Clerk of Superior Court:

Pursuant to your notification that the appeal in Superior Court has been properly perfected, the following documents are indexed and transmitted as the record on appeal. Alternatively, if checked below, this is a summary transfer of the entire file.

- " Docket or listing of case events
- " Disposition
- " Documentation of payment of any sanction, deposit, or bond
- " Motions or responses
- " Record or transcript of the hearing(s)
- " Exhibits (admitted or not)
- " Appellate memoranda
- " Other _____
- " Complaint
- " Summary Transfer - The entire file is sent for further action by the Superior Court per Rule 20

Dated: _____

Clerk

* Suggested Form - Not in Rules

TransmittalofRecord.wpd

)	[CAPTION]
STATE OF ARIZONA)	No. _____
)	
vs.)	Charge No. _____
)	
)	NOTICE OF FINAL DISPOSITION
)	OF APPEAL BY LIMITED COURT
)	(CIVIL TRAFFIC)

-29-

Civil Traffic Flow Chart

